



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-HQ-OAR-2021-0742; FRL-10611-01-R5]

Finding of Failure to Attain and Reclassification of the Detroit Area as Moderate for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is determining that the Detroit area failed to attain the 2015 ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date. The effect of failing to attain by the applicable attainment date is that the Detroit area will be reclassified by operation of law to "Moderate" nonattainment for the 2015 ozone NAAQS on March 1, 2023, the effective date of this final rule. Accordingly, the Michigan Department of Environment, Great Lakes, and Energy (EGLE) must submit State Implementation Plan (SIP) revisions and implement controls to satisfy the statutory and regulatory requirements for Moderate areas for the 2015 ozone NAAQS according to the deadlines established in this final rule.

DATES: This final rule is effective on March 1, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2021-0742. All documents in the docket are listed on the www.regulations.gov website. Although listed

in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353-4489 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4489, svingen.eric@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Background Information.

Clean Air Act (CAA) section 181(b)(2) requires EPA to determine, based on the design value of an ozone nonattainment area as of the area's attainment deadline, whether the area has

attained the ozone standard by that date.¹ On August 3, 2018, EPA designated the Detroit area, consisting of Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties, as a Marginal nonattainment area for the 2015 ozone NAAQS (83 FR 25776). On April 13, 2022, EPA proposed to determine that the Detroit area failed to attain the 2015 ozone NAAQS by August 3, 2021, the applicable attainment date for Marginal areas, and did not qualify for a 1-year attainment date extension (87 FR 21842). The proposed determination was based upon complete, quality-assured and certified ozone air quality monitoring data that showed that the design value for the area exceeded 0.070 parts per million (ppm) for the 2018-2020 period. EPA proposed that the Detroit area would be reclassified as a Moderate nonattainment area by operation of law on the effective date of a final action finding that the area failed to attain the 2015 ozone NAAQS by the applicable attainment date for Marginal areas. Once reclassified as Moderate, the Detroit area would be required to attain the 2015 ozone NAAQS "as expeditiously as practicable" but no later than 6 years after the initial designation as nonattainment, which in this case would be no later than August 3, 2024.

In the April 13, 2022, proposal, EPA solicited comment on adjusting the due dates, in accordance with CAA section 182(i),

¹ An area's design value for the 2105 ozone NAAQS is the highest three-year average of the annual fourth-highest daily maximum eight-hour average concentrations of all monitors in the area. To determine whether an area has attained the ozone NAAQS prior to the attainment date, EPA considers the monitor-specific ozone design values in the area for the most recent three years with complete, quality-assured monitored data prior to the attainment deadline.

for submission and implementation deadlines for all SIP requirements that apply to Moderate areas. On October 7, 2022, EPA finalized its proposed action for 22 Marginal areas that failed to attain by the applicable attainment date (87 FR 60897). In the October 7, 2022, rulemaking, EPA provided a response to comments relevant to all areas subject to reclassification.

II. Moderate Area SIP Due Dates.

Once a nonattainment area is reclassified as Moderate, the responsible state agency must subsequently submit a SIP revision that satisfies the air quality planning requirements for a Moderate area under CAA section 182(b). SIP requirements that apply to Moderate areas are cumulative of CAA requirements for the Marginal classification and include additional Moderate area requirements as interpreted and described in the final SIP Requirements Rule for the 2015 ozone NAAQS (see CAA sections 172(c)(1) and 182(a) and (b), and 40 CFR 51.1300 through 51.1319). These requirements include reasonably available control measures and reasonably available control technology (RACM/RACT) and vehicle inspection and maintenance (I/M).

EPA's April 13, 2022, proposed rule discusses EPA's basis for establishing deadlines for Moderate area SIP revisions and implementation of RACM/RACT and Basic I/M programs (87 FR 21842, 21852). With respect to SIP requirements for Moderate areas, we proposed that for any of the Moderate area controls to influence attainment by the Moderate area attainment date, they would need

to be implemented by the beginning of the 2023 ozone season at the latest. With respect to implementation deadlines for RACM/RACT, we proposed that the modeling and attainment demonstration requirements for 2015 ozone NAAQS nonattainment areas classified Moderate or higher require that a state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season, notwithstanding any alternative deadline established per 40 CFR 51.1312.² For reclassified areas, EPA's implementing regulations for the 2015 ozone NAAQS require that the state shall provide for implementation of RACT as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP submission deadline, whichever is earlier, or the deadline established by the Administrator in the final action issuing the area reclassification.³ With respect to I/M, EPA proposed to allow areas newly required to implement Basic I/M up to 4 years after the effective date of designation and classification to fully implement the I/M program for states that do not intend to rely upon emission reductions from their Basic I/M program in attainment or reasonable further progress (RFP) SIPs.

EPA also discussed CAA section 182(i), under which the Administrator may adjust applicable deadlines for reclassified

² See 40 CFR 51.1308(d).

³ See 40 CFR 51.1312(a)(3)(ii).

areas "to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions." In the April 13, 2022, rulemaking, which proposed reclassification for Detroit as well as 23 other areas, EPA noted that the ozone season begins in either January or March for the various areas.⁴ To avoid inconsistencies between areas with various ozone season start dates, EPA proposed under CAA section 182(i) to set a deadline of January 1, 2023, for Moderate area SIP revisions and implementation of RACM/RACT for all areas.

To avoid the impractical outcome whereby EPA might finalize a January 1, 2023, due date that has already passed for the Detroit area, and because March is the start of the ozone season in Michigan, EPA is instead finalizing March 1, 2023, as the due date for SIP revisions addressing Moderate requirements for the Detroit area. RACM/RACT for the area must be implemented as expeditiously as practicable, but no later than the same date.

Regarding the requirement for a Basic I/M program, EPA is finalizing an implementation deadline of no later than 4 years after the effective date of reclassification should EGLE not intend to rely upon emission reductions from their Basic I/M program in attainment or reasonable further progress (RFP) SIPs.

If an area attains the 2015 ozone NAAQS, the relevant state may request redesignation to attainment, provided the state can demonstrate that the criteria under CAA section 107(d)(3)(E) are

⁴ The ozone season is defined by state in 40 CFR part 58, appendix D. The ozone season for Michigan is March-October. See 80 FR 65292, 65466-67 (October 26, 2015).

met.⁵ On March 14, 2022, EPA proposed to approve a January 3, 2022, request from EGLE to redesignate the Detroit area to attainment based on 2019-2021 monitoring data showing attainment of the 2015 ozone NAAQS (87 FR 14210). The comment period on EPA's proposed action closed on April 13, 2022, and EPA is currently reviewing all public comments to further assess whether Michigan adequately addressed all requirements applicable to redesignation that applied to Detroit on the date of EGLE's submittal.

III. What Action is EPA Taking?

EPA is finalizing its proposed determination that the Detroit area failed to attain the 2015 ozone NAAQS by the applicable attainment date of August 3, 2021. Therefore, upon the effective date of this final action, the Detroit area will be reclassified by operation of law as Moderate for the 2015 ozone NAAQS. Once reclassified as Moderate, the Detroit area will be required to attain the standard "as expeditiously as practicable" but no later than 6 years after the initial designation as nonattainment, which in this case would be no later than August 3, 2024. Pursuant to CAA section 182(i), EPA is requiring Michigan to submit SIP revisions to address Moderate area requirements by the beginning of the ozone season, or March 1, 2023.

IV. Good Cause Exemption Under the Administrative Procedure Act (APA) .

⁵More information about redesignation is available at <https://www.epa.gov/ground-level-ozone-pollution/redesignation-and-clean-data-policy-cdp>.

EPA finds there is good cause for this action to become effective less than 30 days after publication. The March 1, 2023, effective date is authorized under 5 U.S.C. 553(d) (3) of the APA, which allows an effective date less than 30 days after publication as provided by the agency for good cause found and published with the rule. EPA believes that there is "good cause" to make this rule effective less than 30 days after publication in the *Federal Register* to avoid any additional delay in development and implementation of the SIP requirements under 182(b), given the closeness to the beginning of the 2023 ozone season and the proximity of EPA's final action to the submission and implementation deadlines described in this rule. The agency believes that establishing an effective date of this action simultaneous with due dates resulting from this action will reconcile the competing statutory interests by minimizing a potentially impractical outcome in which the area might otherwise be subject to Moderate nonattainment area statutory and regulatory due dates that would already have passed prior to the normal 30 days post-publication effective date. Further, although this action will become effective less than 30 days after publication, a state need not wait until EPA's finding of failure to attain and reclassification is made effective before beginning to develop an attainment plan for a higher classification of an air quality standard.

V. Statutory and Executive Order Reviews.

A. Executive Order 12866: Regulatory Planning and Review and

Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget (OMB) because it responds to the CAA requirement to determine whether areas designated nonattainment for an ozone NAAQS attained the standard by the applicable attainment date, and to take certain steps for areas that failed to attain.

B. Paperwork Reduction Act (PRA)

This rule does not impose any new information collection burden under the PRA not already approved by the Office of Management and Budget. This action does not contain any information collection activities and serves only to make final: (1) determinations that the Detroit Marginal nonattainment area failed to attain the 2015 ozone standards by the August 3, 2021, attainment date where such areas will be reclassified as Moderate nonattainment for the 2015 ozone standards by operation of law upon the effective date of the final reclassification action; and (2) adjust any applicable implementation deadlines.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The determination of failure to attain the 2015 ozone standards (and resulting reclassifications), do not in and of themselves create any new requirements beyond what is mandated

by the CAA. This final action would require the State to adopt and submit SIP revisions to satisfy CAA requirements and would not itself directly regulate any small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the Federal Government and the states for purposes of implementing the NAAQS is established under the CAA.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From

Environmental Health and Safety Risks

EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and

low-income populations in the United States. There is no information in the record indicating that this action would be inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

K. Congressional Review Act

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: January 25, 2023.

Debra Shore,
Regional Administrator, Region 5.

For the reasons stated in the preamble, 40 CFR part 81 is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 81.323 is amended in the table for “Michigan–2015 8-Hour Ozone NAAQS [Primary and Secondary]” by revising the entry for “Detroit, MI” to read as follows:

§ 81.323 Michigan.

* * * * *

Michigan–2015 8-Hour Ozone NAAQS

[Primary and Secondary]

Designated area ¹	Designation		Classification	
	Date ²	Type	Date ²	Type
* * * * *				
Detroit, MI: Livingston County Macomb County Monroe County Oakland County St. Clair County Washtenaw County Wayne County		Nonattainment	March 1, 2023.	Moderate.
* * * * *				

¹Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

²This date is August 3, 2018, unless otherwise noted.

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